

of service to consumers and limit the participation of the small SMRs, even with incentives. (10-11)

Incumbent Rights and Obligations

- Incumbent licensees on the upper 200 channels should be protected on their existing frequencies, not forced to relocate to other channels whether or not their expenses are paid. (9)
- Most incumbent licensees on the upper 200 channels are in rural areas where capacity is not an issue. If a consolidator wants these frequencies, then the consolidator should be required to buy out the existing licensee or pay their voluntary relocation expenses. (10)
- Most incumbent licensees have a large, installed customer base and relocation would harm these customers. In addition, most rural area systems are heavily interconnected and the customers roam to other systems over the rural area in which they regularly travel. Coordinating the re-programming of these customers on multiple systems would be inconvenient to the customer, requiring multiple re-programming events. (10)

SMR WON

- Association of 130 SMR operators and equipment manufacturers

Allocation Issues

- Opposes auctions. If there are auctions, auction block should be reduced to 100 channels in two 50 channel blocks on a BEA basis. One of the blocks should be auctioned in 5 blocks of 10 channels each. Any auctions should be subject to establishment of 100 channel Relocation Block. (10,15)
- Small operators cannot compete in BEA cluster auctions. (15)
- Lower channels are only involved to the extent auction winners are required to relinquish channels to relocate incumbents. Opposes geographic overlay licenses in 80 lower channels. (17)
- Supports 10 MHz spectrum cap with no attribution maximums. (18)
- FCC should consider that since it issued its proposal for overlay licenses, the stock prices of publicly traded SMRs have dropped. (19)

MTA Licensee Rights and Obligations

- Licensees must protect co-channel licensees in adjacent areas. New operations must not place a 40 dbu signal across a BEA border and must protect existing site-specific operations to their protected contour areas without using the short spacing tables. Short spacing rules should be eliminated. (11)
- Opposes partitioning because, if structured as in PCS auctions, it would not provide adequate protections to incumbent licensees. (16)
- Supports open architecture and interoperability as essential to the future of the SMR industry. (17)
- Auction winners must provide their channels in the lower 400 to the relocation block in proportion to the block of channels they have won. (Exhibit 3 at 3)

Construction Requirements

- Auction winners having existing extended construction waivers in a market should be required to construct under original 5 year schedule and should not be allowed another five year extension. Any channels not constructed within three years should be returned for retuning existing licensees. (18)

Incumbent Rights and Obligations

- Possible spectrum for Relocation Block is 470-512 MHz. (8)
- Criticizes Nextel/AMTA retuning proposal as inadequate because of insufficient spectrum and continued use of site-specific licensing and short spacing rules. It is detrimental to smaller licensees. (13-14)
- Supports geographic market licenses to incumbent SMRs. (16)
- Incumbents should have right to expand or move systems within their existing constructed footprint. (Exhibit 3 at 4).

Treatment of General Category Channels and Intercategory Sharing

- General Category Channels are likely place for Relocation Block. (17)
- No change should be made in any safety licensee or any channel allocated to safety services. (Exhibit 3 at 3)

Other Issues

- Nextel has not demonstrated that it has the technology to construct a system competitive with cellular.
- Four Exhibits are attached:
 - Exhibit 1 -- J.P. Morgan analysis of Nextel
 - Exhibit 2 -- Frequency Study of four SMR markets
 - Exhibit 3 -- Summary of Revised SMR WON Plan
 - Exhibit 4 -- Study of Alternative Licensing Plans

THE SOUTHERN COMPANY

- 800 MHz wide-area SMR licensee

Allocation Issues

- Although Congress has mandated some level of regulatory parity in the CMRS scheme, Nextel's and the Commission's proposals go beyond what Congress contemplated and would hinder the policies that Congress envisioned in creating the CMRS framework because they are neither necessary nor practical, and would create tremendous disruption and harm to incumbent SMR licensees in exchange for the possibility of benefitting a few. (2-4)
- While in concept Nextel's proposal allows for the possibility of enhanced competition in the marketplace between the holders of MTA spectrum blocks and cellular or PCS, the costs to the SMR market outweigh the possible incidental gain to CMRS competition. Neither the text nor spirit of the Budget Act, nor the Commission's obligations to preserve competition, support the one-company oriented scheme proposed in the FNPRM. (4-6)
- The proposals in the FNPRM are different from those initially proposed in 1993, and are derived from Nextel's comments in the Regulatory Parity proceeding. The proposals benefit no one but Nextel. Many commenters, including some large SMR players, described how the proposal would harm other 800 MHz SMR licensees and are unworkable in view of the fact that 800 MHz spectrum is almost completely licensed. (8-11)
- There is no consensus in the comments that grant of continuous spectrum is desirable or workable, nor is there any consensus that MTAs are the appropriate unit for wide-area licensing of heavily congested 800 MHz SMR spectrum. Notes that PCIA prefers the use of modified MSAs and that numerous other commenters support use of BEAs. Urges the Commission to refrain from adopting any alternative wide-area geographic unit definition without soliciting full notice and comment. (11-13)
- Relicensing of contiguous spectrum requires that existing operations cease and that the band be cleared to accommodate new MTA licensees, which implies the forced removal of 30,000 existing 800 MHz SMR operators off of frequencies licensed to them. Southern and SMR WON documented that there is insufficient unused spectrum to create the proposed 200 channel block in their market areas, and that only Nextel has sufficient spectrum warehoused to accommodate displaced licensees. Forced relocation of 30,000 licensees is not in the public interest and will disrupt the provision of service to the public. (13-14)

- Given the lack of consensus in the industry on the best manner for licensing of wide-area and local SMRs and the opposition to Nextel's plan, the Commission cannot adopt wide-area licensing rules. The best way to achieve the wide-area concept is to allow existing SMR licensees to apply for wide-area status, giving them the right to reuse frequencies throughout self-defined service areas while protecting incumbents. At a minimum, the Commission must maintain the status quo until the industry reaches a consensus. (36-37)

Auction Issues

- Notes that several commenters challenge the Commission's legal authority to hold auctions for 800 MHz SMR services and that scores oppose the proposal to auction 800 MHz SMR spectrum. Supports these views and states that the Commission does not have legal authority to conduct auctions where there is no "spectrum" to auction, but simply "marketing rights" concerning heavily congested or completely occupied spectrum. Notes that only Nextel fully supports the Commission's auction proposal, provided that it is conducted on Nextel's terms. (18-21)
- To the extent that "white space" exists at 800 MHz, it is available to applicants under the existing regulatory framework. Thus, the Commission's proposal is unnecessary for the purpose of permitting access to unlicensed spectrum or utilization of contiguous spectrum by one licensee -- licensees can do so already by applying for unlicensed channels and negotiating with incumbent licensees. This scheme best fosters real free market competition and best serves the industry and the public interest. (21-22)
- Nextel's preferred auction methodology for MTA licensing reflects the company's acknowledgement of its dominance in the industry. Nextel concedes its overwhelming lock on the wide-area SMR industry by concluding, in effect, that any entity other than Nextel that bids for wide-area SMR spectrum is an auction greenmailer intent on obstructing Nextel by forcing it to pay more than it otherwise might have for spectrum it already believes it controls. (32-33)
- Nextel's contention that existing rules facilitating the participation of Designated Entities in broadband PCS are sufficient to ensure participation by such entities in CMRS services -- and, therefore, Nextel's intimation that similar provisions are not necessary in wide-area SMR auctions -- is ironic in view of the fact that SMR is one of few industry sectors with significant small business representation and is contrary to the Budget Act. (33-34)
- Nextel's auction proposal suggests rules and procedures that will stifle participation by any party other than Nextel. Nextel proposes a larger than usual upfront payment requirement and additional penalties beyond the usual

withdrawal penalty aimed at ensuring that auction participation is limited. Urges the FCC to recognize that an MTA auction (under Nextel's design or any other) would not be an auction in any real sense because there is no real "spectrum" available to auction and the spectrum that may be available exists in an environment dominated by Nextel. Thus, FCC should abandon its ill-conceived MTA auction proposal. (34-36)

MTA Licensee Rights and Obligations

- Many of the rights proposed for MTA licensees already exist or are obtainable through waivers -- this includes the authority to construct and move sites within a "wide-area system" and the right to negotiate to acquire spectrum from existing licensees. Any proposal to allow an MTA licensee automatic ability to recover unconstructed or unused frequencies within the MTA undermines the Finder's Preference policy. Supports the comments of Fresno Mobile Radio, Inc. suggesting that the Finder's Preference program be maintained under an MTA licensing scheme. (14-15)

Construction Requirements

- As pointed out by several commenters, the flaw in the proposed coverage requirements for MTA licensees is that many existing licensees already meet the requirements where they serve metropolitan areas. These licensees could receive an MTA license and merely hold on to the spectrum without needing to construct or operate new channels. (17)
- Existing extended implementation schedules must be honored -- there is no justification for penalizing licensees who filed in accordance with the rules and secured an extended implementation schedule solely for one competitor's benefit. Southern supports the view of DCL Associates, Inc. that retroactive reduction or elimination of existing extended implementation schedules would shake the industry's confidence in the SMR service. (16-17)

Incumbent Rights and Obligations

- Scores of commenters oppose precluding existing SMR licensees from modifying or moving existing sites -- any proposal limiting the expansion or growth of existing SMR systems is anticompetitive and not in the public interest. (15-16)
- The FCC cannot guarantee full co-channel protection of existing SMRs operating within an MTA. The MTA licensee will monopolize the entire MTA and will be able to crowd out local operations by blatant co-channel interference or through a frequency reuse plan that surrounds and suffocates the incumbent. (16)

- The most insidious portion of Nextel's plan is the mandatory relocation of existing SMR licensees, which totally disregards the future of existing licensees and the needs of their customers. Nextel's assurances that these entities will receive comparable spectrum home are speculative at best given the fact that there is no guarantee of available spectrum for relocation. (31)
- Nextel's relocation proposal is one-sided, leaving existing licensees to be relocated when and if the MTA licensee chooses to force them out. If the Commission proceeds with the proposal, the MTA licensee must be required to relocate an incumbent if and when the incumbent requests relocation, and a "premium" must be paid to the incumbent to compensate it for the uncertainty and inconvenience associated with relocation. (31)

Treatment of General Category Channels and Intercategory Sharing

- Nextel takes a quantum leap from the Commission's inquiry by seeking to reallocate all General Category and Business Category frequency bands for use only by SMR licensees displaced from the upper 200 channel block. This proposal is a complete spectrum reallocation not contemplated in the FNPRM and is beyond the scope of this proceeding. (23)
- Currently, General Category channels are open to all entities, including SMRs, and the Business Radio channels are open to entities engaged in commercial activity. Designating these channels for displaced SMRs only would effectuate a reallocation, jeopardize non-SMR operations on affected frequencies, and freeze out any new SMR licensees. (24-25)
- Adoption of Nextel's proposal would stifle competition, is contrary to the public interest, and ignores the fact that, like SMR channels, General Category and Business Radio frequencies are virtually all licensed. Critical private mobile radio systems should not be forced off their frequency allocations to perpetuate the business plan of one player. (29-30)

Other Issues

- Nextel should be required to file a separate petition for rule making or the Commission must adopt another FNPRM advancing Nextel's proposal -- in either event, Nextel's instant comments should be dismissed as beyond the scope of this proceeding. Section 553(c) of the Administrative Procedure Act makes clear that any agency is remiss if it rushes to act on a proposal advanced by an interested party without full consideration of the interests of all affected parties -- the Commission cannot meet this obligation with regard to Nextel's proposal. (26-28)

SPECTRUM RESOURCES, INC.

- Provider of consulting engineering services and management services for mobile communications spectrum

Incumbent Rights and Obligations

- Opposes the Commission's proposal that voluntary, rather than mandatory relocation be adopted. Mandatory relocation is necessary to give wide-area SMR licenses relief from the current licensing process. (1-2)
- In the reallocation of the 2 GHz band, the Commission subjected public safety microwave users to mandatory relocation despite potential adverse affects to the public safety interests. (2)
- Without mandatory relocation, the 200 channels reallocated for SMR systems would be rendered useless for introduction of advance SMR technologies. (2)
- SRI's relocation proposal set forth in its comments would allow incumbent licensees either to obtain comparable spectrum or to obtain a reasonable price. (3)
- Contrary to the belief of some incumbent licensees, licensees do not have any property rights to the spectrum. (4)

Other Issues

- The Commission should expedite its action. If the Commission does not act quickly, the SMR industry may be unable to withstand the continued adverse affects of the regulatory uncertainty. (4-5)

SUPREME RADIO COMMUNICATIONS, INC.

- SMR-trunked system operator

Allocation Issues

- By applying MTA boundaries to a fully mature licensing system, Nextel is demanding that an organized system of licensed facilities shift and reconfigure itself to fit into a new system. (3)

Auction Issues

- Auctions would provide a distinct advantage for Nextel such that the Commission could reasonably expect that only Nextel would bid in many instances. (2)

Incumbent Rights and Obligations

- The forced relocation of microwave users does not justify relocating analog SMR operators. In PCS, the Commission identified other spectrum to accommodate affected licensees but no such identification has occurred for analog SMR operators and subscribers. (3)
- Adoption of the frequency swapping proposal would be blatantly anticompetitive. (3)

Other Issues

- Nextel is not seeking parity, but advantages over its competitors. (4)
- If Nextel was truly seeking parity, it could have sought a rulemaking to create and accommodate a wholly new service. (4)
- If Nextel truly seeks parity, the Commission should remove the grants of waiver and allow wide-area systems based on standards of loading, construction and interference protection for existing systems. (5)

T&K COMMUNICATIONS, INC.

- SMR provider

Allocation Issues

- Opposes the Nextel proposal to create an ESMR system through the destruction of existing SMR systems given that SMRs provide an affordable, necessary service. (2, 4-6)
- Rather than allow Nextel to warehouse spectrum, the Commission should continue to use its regulatory power to allow small, hard working SMR operators to gradually build their systems as they need more spectrum. (3-4)

TELECELLULAR DE PUERTO RICO, INC.

- SMR provider

Allocation Issues

- Favors the use of BEAs rather than MTAs or BTAs as licensing areas because BEAs are non-proprietary and therefore do not require a licensing fee. (3-4)
- Suggests that a single BEA encompass Puerto Rico. (4-5)

Construction Requirements

- Licensees that are part of a system for which extended implementation was requested prior to 8/9/94 should not be constrained by the operating parameters of the primary licensed facility. Such licensees should be allowed to construct fill-in transmitters so long as the 40 dBu contour of the fill-in does not extend beyond the 35 mi. contour centered at the primary facility. (2-3)

Incumbent Rights and Obligations

- Because incumbent SMRs are harmed more than new wide-area ESMRs by single channel interference, opposes Nextel's proposal to permit short spacing without a waiver when the distance between transmitters is less than the minimum distance provided for in the short spacing table. (5-6)

TRIANGLE COMMUNICATIONS, INC.

- SMR provider

Allocation Issues

- Nextel does not propose to provide a useful service in that the market has rejected the concept of ESMR as overpriced and underperforming. The majority of SMR customers need only inexpensive dispatch service. Those desiring greater capabilities now utilize cellular services and might utilize PCS in the future. (7-9)
- The Commission should not allow Nextel to use this proceeding to warehouse spectrum. (9-10)

U.S. SUGAR CORPORATION

- America's largest producer of sugar cane and raw sugar; operates 21 channel SMR system

Incumbent Rights and Obligations

- Opposes mandatory relocation of small SMR incumbents. Would harm public interest by placing undue burden on small SMRs. Any relocation proposal must allow incumbent licensees to operate dual systems during transition period. (4)
- If there is mandatory relocation, MTA licensee should be required to pay incumbent a premium above calculable relocation costs. (4-5)
- Most commenters opposed mandatory retuning. It would give wide-area licensees too much power over local licensees at bargaining table. (6)
- Understands that there are strong competitive and financial factors favoring use of auctions, but does not believe that success of auctions hinges on mandatory relocation plan. Mandatory relocation should not be allowed to damage growth expectations and operating needs of small SMRs. (7)

UTC

- National representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines

Allocation Issues

- Agrees with Southern Company that the development of a competitive wide-area SMR marketplace requires limitations on the number of frequency blocks that a single entity may hold in a given geographic market, and recommends that a single entity be limited to two 50-channel blocks per geographic area. (8)
- Has serious concerns that the use of MTAs for licensing wide-area SMRs will dilute the emphasis on the provision of specialized services -- *i.e.*, those developed to meet the unique operational needs of customers -- in order to concentrate on plain "vanilla" common carrier services. (9)

Incumbent Rights and Obligations

- Opposes mandatory relocation, stating that utilities and pipelines licensed to operate on the 800 MHz SMR channels have radio systems that are integral to the safe and efficient provision of utility service. Relocation of these systems would impose significant costs. (5-6)
- Relocation should be left to marketplace mechanisms and, at a minimum, any transition process must ensure that incumbent licensees are made "whole" both financially and operationally -- including being provided with fully comparable replacement facilities at the expense of the wide-area licensee. (6)
- Reiterates concern that the rules specify that incumbent licensees will not be forced to relocate their facilities more than once. (6)
- Views Nextel's proposed six-month voluntary negotiation period as a hollow gesture, which is unrealistic in view of the number of licensees that would have to enter into negotiations and the scope of the negotiations. Nextel's proposal also could allow some wide-area licensees to escape voluntary negotiations because they may not need to relocate any incumbent systems during the first six months after license grant. (7)
- States that Motorola echoes UTC's recommendation that, pending relocation, incumbents should be grandfathered with primary licensing rights vis-a-vis new licensees in terms of co-channel interference protection. Also states that commenters agree with UTC's suggestion that the Commission adopt

provisions allowing incumbent systems to construct stations anywhere within a defined protected service area. (7-8)

Treatment of General Category Channels and Intercategory Sharing

- Reiterates support for the FCC's proposal to revise the intercategory sharing rules to prohibit SMR and non-SMR applicants from applying for the same channels, and urges elimination of intercategory SMR access to pool channels. This will establish clear demarcation between SMR and non-SMR spectrum and eliminate the risk of SMR encroachment on non-auctionable spectrum allocated for internal, private use. (2)
- Pool channels are dedicated for non-commercial internal use by Business and Industrial/Land Transportation licensees and their availability for SMRs was intended to be on a limited basis only. Accordingly, UTC opposes Nextel's proposal to convert the Business Radio Pool channels to exclusive SMR use. Nextel's statement that most Business Radio licensees provide commercial service to third parties is an overstatement and ignores the fact that a number of utilities and pipelines have turned to the Business Radio channels as a result of frequency unavailability in the Industrial/Land Transportation Pool. (3)
- Opposes Motorola's proposal to retain unconditional SMR access to the Pool Channels. Motorola's recommendation that the Commission maintain the status quo ignores that the auctioning of 800 MHz SMR frequencies will dramatically alter the existing channel selection process by creating an artificial demand for the Pool Channels, which are not subject to competitive bidding, depleting their availability for use by non-commercial entities. (3-4)
- Urges the Commission to eliminate prospective access to 800 MHz General Category frequencies by new SMR licensees for similar reasons, and opposes the recommendations of Motorola and PCIA that the Commission maintain the existing shared access scheme for these channels. (4)
- Adamantly opposes Nextel's suggestion that General Category spectrum be allocated exclusively to SMR use. PMRS licensees operate in these channels and require flexibility to expand their systems. Further, the General Category channels are a badly needed "safety valve" for the spectrum congestion problems of PMRS users. (5)
- Proposes that the General Category channels be available to relocated SMR licensees unable to obtain access to suitable replacement spectrum in the SMR channels. Relocated private 800 MHz licensees should first seek access to the Pool channels prior to obtaining access to the General Category frequencies. (5)